

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

United States of America,

Plaintiff,

v.

Vincent Campos,

Defendant.

No. 1:20-cr-00049-NONE-SKO-1

ORDER

Defendant Vincent Campos pled guilty to charges of distribution of methamphetamine, 21 U.S.C. § 841(a)(1) (counts one through five) and possession with intent to distribute methamphetamine, 21 U.S.C. § 841(a)(1) (counts six and seven). He objects to reassignment of his case for sentencing under Federal Rule of Criminal Procedure 25(b), arguing that his sentencing should proceed before the same judge who accepted his guilty plea. **The motion is denied**, as explained below.

**I. BACKGROUND**

The government charged Mr. Campos with distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) (counts one through five) and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1) (counts six and seven). *See generally* Indictment, ECF No. 13. These charges were based on his alleged involvement in the unlawful sale of methamphetamine in the greater Sacramento area. Presentence Rep. (PSR) ¶¶ 11–17,

1 ECF No. 68 (sealed). Mr. Campos had several telephonic conversations in which he negotiated  
2 with customers to exchange approximately 223 grams of methamphetamine for \$1,000. *Id.* ¶¶  
3 14–17; *see also* Plea Agreement, Factual Basis at 12, ECF No. 62. On February 13, 2020, he was  
4 arrested, then released and placed on bond. *See* ECF Nos. 5 & 55. Shortly thereafter, the parties  
5 stipulated to modify the terms of Mr. Campos’ pretrial release due to medical concerns. *See* Stip.  
6 ECF No. 39. On April 23, 2021, the U.S. Pretrial Services Officer assigned to his case filed a  
7 violation petition alleging defendant had not complied with pretrial release conditions requiring  
8 periodic drug testing. *See* ECF No. 56. On April 26, 2021, defendant was arrested and detained  
9 on this alleged violation. *See* ECF No. 61.

10 A week later defendant pled guilty before District Judge Dale A. Drozd, who is  
11 temporarily covering this case and others comprising the “NONE” caseload previously carried by  
12 former Chief District Judge Lawrence J. O’Neill. *See* ECF No. 66; *see also* ECF No. 19  
13 (standing order issued in light of judicial emergency noting “[u]ntil new judges arrive, [Judge  
14 Drozd] will preside as the district judge” in cases for which the presiding judge is designated as  
15 “NONE”). As noted, Mr. Campos pled guilty to five counts of distribution of methamphetamine  
16 and two counts of possession with intent to distribute methamphetamine. *See generally* Plea;  
17 Change of Plea Hr’g Tr., ECF No. 76. The case was set for sentencing on July 30, 2021, ECF  
18 No. 66 (sentencing minutes), and then continued to August 13, 2021, ECF No. 70. On August 6,  
19 defendant filed a sentencing memorandum requesting a custodial sentence in the range of 46 to 57  
20 months. *See* ECF No. 71. The government also filed a sentencing memorandum, requesting the  
21 court impose a custodial sentence in the range of 100 to 125 months. *See* ECF No. 72. The  
22 Probation Officer recommended a custodial sentence based on a guidelines range of 121 to 151  
23 months. *See* PSR at 4.

24 On August 9, 2021, the undersigned notified the parties that due to the ongoing judicial  
25 emergency in the Eastern District of California and the extreme press of the two caseloads Judge  
26 Drozd is covering, one only temporarily, this case would be reassigned to District Judge Troy L.  
27 Nunley for sentencing on Tuesday, August 17. *See* Min. Order, ECF No. 73. Defense counsel  
28 objected in communications with the courtroom deputy, and the court set a briefing schedule. *See*

ECF No. 75. Defendant submitted his motion with a request to file it under seal. *See* Req., ECF No. 77<sup>1</sup>; Mot., ECF No. 81 (sealed). The government did not file any opposition. The court resolves the motion below.

## II. LEGAL STANDARD

Federal Rule of Criminal Procedure 25(b) governs reassignment of cases, providing,

If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties . . .

Fed. R. Crim. P. 25(b). “Other disability” is the most applicable textual basis for reassignment here. While the dictionary definition of “disability” reflects notions of physical, mental or legal disability, Black’s Law Dictionary (11th ed. 2019) (defining “disability” as “inability to perform some function” or something “that prevents a person from engaging in meaningful work”), one circuit court has observed that the “necessary breadth” of Rule 25(b)’s “by reason of” clause “embraces the ground of substantial delay,” *United States v. Colon-Munoz*, 318 F.3d 348, 355 (1st Cir. 2003). Assuming a case is properly reassigned, a judge other than the trial judge may conduct the sentencing once the new judge determines he is competent to take over those duties. *See* Fed. R. Crim. P. 25(b)(1); *United States v. Larios*, 640 F.2d 938, 942 (9th Cir. 1981). This means the sentencing judge must be familiar enough with the case to be able to assign the appropriate sentence. *See Larios*, 640 F.2d at 942; *U.S.A. v. Syjuco*, No. 12-00037, 2014 WL 12708971, at \*2 (C.D. Cal. July 7, 2014). Practically speaking, once a case is reassigned by the Chief Judge, E.D. Local R. 123(c), and the reassignment effected, then the new judge makes the

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<sup>1</sup> The court, having considered the defendant’s representations in his request to seal, the contents of the brief in support of his motion and the supporting exhibits, finds good cause to **grant in full** defendant’s request to seal. *See* ECF No. 80. While the request is not fully compliant with Local Rule 141(b), requiring such a request to, among other things, “set forth the statutory or other authority for sealing,” the documents covered by defendant’s request on their face contain attorney client work product and reference attorney client communications, and the exhibits comprise court documents containing confidential information or transcripts sealed on the court’s docket.

1 required determination. Nothing prevents a party from making motions before the new judge as a  
2 party deems appropriate.

3 It also bears noting that this court's Local Rules provide in pertinent part that

4 the Chief Judge may make such other assignments, reassignments  
5 or related orders as are conducive to the equitable division and just,  
6 efficient and economical determination of the business of the Court.

7 E.D. Cal. Local Rules, Appendix A (f)(4).

### 8 **III. DISCUSSION**

9 Mr. Campos argues the reassignment of the case to Judge Nunley does not meet the "by  
10 reason of" requirement of Rule 25(b) because the judicial crisis in the Eastern District provided as  
11 the reason for reassignment does not satisfy one of the prerequisites recognized by the rule. Mot.  
12 at 8 (sealed) (citing Fed. R. Cr. P. 25 (b)(1) (crisis does not satisfy "absence, . . . sickness, or other  
13 disability.")). Defense counsel also argues had they known the case would be reassigned, counsel  
14 "would have likely made a different decision when deciding whether to resolve the case with a  
15 plea agreement." Mot. at 13; Sasso Decl. ¶¶ 2–12, ECF No. 81-2 (sealed). In particular, she  
16 would have made different decisions "to build the most salient [18 U.S.C.] § 3553 record  
17 responsive to the particular concerns of the assigned sentencing judge." *Id.*; Lee Decl. ¶¶ 2–9,  
18 ECF No. 81-3 (sealed).

19 The defense relies on *United States v. Harris*, 679 F.3d 1179, 1182 (9th Cir. 2012),  
20 to argue a court's being "in turmoil" does not constitute a reason for reassignment of a case under  
21 Rule 25(b). Mot. at 9. In *Harris*, the case proceeded to sentencing after a jury found defendant  
22 guilty of assault on a federal officer. *Id.* at 1181. The trial judge did not preside over defendant's  
23 sentencing; rather, a visiting judge read the PSR in that case and defendant's objections to it and  
24 was "generally familiar with the record" when that judge sentenced defendant. *Id.* The Circuit  
25 held Rule 25(b) "assumes it to be important that sentencing be done by the judge who presided at  
26 trial . . . because only that judge has had the opportunity to observe every aspect of the trial and to  
27 take into account in sentencing what has been observed." *Id.* at 1183 (internal quotations  
28 omitted).

1 Unlike the defendant in *Harris*, Mr. Campos did not proceed to trial and so Judge Drozd  
 2 did not have the opportunity to observe the government’s case, any defense case, and all the  
 3 evidence that would have been presented during a jury proceeding. Rather, Judge Drozd’s  
 4 familiarity with the case is based solely on his taking defendant’s plea, which is no small matter  
 5 but nonetheless often does little to develop the nature of a case. During sentencing, the record  
 6 reflects that Judge Drozd faithfully followed the colloquy required by Federal Rule of Criminal  
 7 Procedure 11. Hr’g Tr. at 4–15. Judge Drozd accepted defendant’s guilty plea to counts one  
 8 through five, “distribution of five grams or more of actual methamphetamine and 50 grams or  
 9 more of a mixture or substance containing a detectable amount of methamphetamine.” *Id.* at  
 10 10:4–25 (noting methamphetamine is a Schedule II-controlled substance). For counts six and  
 11 seven, Judge Drozd also accepted defendant’s guilty plea to intent to distribute 50 grams or more  
 12 of actual methamphetamine and 500 grams or more of a mixture substance or substance  
 13 containing a detectable amount of methamphetamine.” *Id.* at 11:17–25. During the colloquy,  
 14 Judge Drozd caught a typographical error in the indictment, which was corrected on the record.  
 15 *Id.* at 10:11–11:22. In accepting the factual basis for the plea, Judge Drozd relied solely on  
 16 defendant’s cursory agreement with the facts provided with the plea, without probing or  
 17 questioning them in any detail. *Id.* at 16:21–17:4.

18 Moreover, the unavailability of Judge Drozd for sentencing is due to the legal “disability”  
 19 caused by the ongoing judicial emergency in this District, which has its worst-case manifestation  
 20 in the Fresno courthouse. With the court’s two vacancies now nearing two years, each active  
 21 district judge is actually averaging 1,860 total cases. *See* Federal Court Management Statistics.<sup>2</sup>  
 22 In the Fresno courthouse, given the two caseloads he has been attempting to cover, one on a  
 23 temporary interim basis since February 2020, Judge Drozd’s total effective caseload is 2,340, of  
 24 which roughly 684 are pending criminal cases. *See generally* ECF No. 19. It is simply not  
 25 sustainable for one judge to carry this number of cases. The undersigned finds the impact of  
 26 Judge Drozd’s total effective caseload satisfies the requirement of a legal disability to support

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<sup>2</sup> <https://www.uscourts.gov/statistics-reports/analysis-reports/federal-court-management-statistics>, visited Sept. 6, 2021.

1 reassignment of this criminal case under Rule 25(b). Notwithstanding his own heavy caseload,  
2 Judge Nunley is willing to act as a modest safety valve in accepting reassignment of some cases.  
3 The second clause of Rule 25(b) affords Judge Nunley as successor judge broad discretion to  
4 determine whether he has sufficient familiarity with the case in order to properly perform the  
5 solemn duties of a sentencing judge. *See United States v. Spinney*, 795 F.2d 1410, 1413 (9th Cir.  
6 1986) (where trial judge was absent by time of sentencing, “no abuse of discretion when the  
7 sentencing judge is familiar with the case and uses informed discretion in passing sentence”  
8 (citations omitted)). In the event Judge Nunley determines he is insufficiently familiar with the  
9 case, he may take additional steps to familiarize himself with the case, allow further development  
10 of the record with respect to 3553 factors, and otherwise ensure he is in a position to impose an  
11 appropriate sentence. *See Larios*, 640 F.2d at 942; *U.S.A. v. Syjuco*, No. CR 12-00037, 2014 WL  
12 12708971, at \*2 (C.D. Cal. July 7, 2014). With the issuance of this order, and the knowledge that  
13 the case remains before Judge Nunley for sentencing, the defense may engage in motion practice  
14 as appropriate and consistent with Federal Rule of Civil Procedure 11. If ultimately Judge  
15 Nunley determines he is unable to perform his duties consonant with Rule 25, he may notify the  
16 undersigned who will consider how to further reassign the case.


17 Finally, the court notes the reassignment of this case for sentencing purposes to Judge  
18 Nunley is provided for, and fully consistent with, the authority of the undersigned as Chief Judge  
19 to reassign cases as “conducive to the equitable division and just, efficient and economical  
20 determination of the business of the Court.” E.D. Cal. Local Rules, Appendix A (f)(4).

21 For these reasons, the court **denies** Mr. Campos’ motion.

22 This order resolves ECF Nos. 81 & 77.

23 IT IS SO ORDERED.

24 DATED: September 27, 2021.

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CHIEF UNITED STATES DISTRICT JUDGE